

REQUEST FOR RESPONSE

RFR#: RFR Legal Services – Issuance of Debt 2014

Underwriters' Counsel Legal Services Related to the Issuance of Debt

Date: June 20, 2014



Request for Response Office of the State Treasurer and Receiver-General

Address: One Ashburton Place, 12th Floor, Boston, MA 02108

Internet Address: <https://www.commbuys.com>, <http://www.massbondholder.com/> and <http://www.mass.gov/treasury/about/procurements>

RFR File Name/Title: Legal Services Related to the Issuance of Debt 2014

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RFR Contact Person: Jameel Moore, e-mail address: procurements@tre.state.ma.us

I. SUMMARY AND PURPOSE

Steven Grossman, the Treasurer and Receiver General (the “State Treasurer”) of the Commonwealth of Massachusetts (the “Commonwealth”), on behalf of the Office of the State Treasurer (the “Treasury”) and agencies under the Treasury, including the Massachusetts Water Pollution Abatement Trust (“Treasury Agencies”) is seeking responses (“Responses” or a “Response”) to this Request for Response (“RFR”) from law firms or individual attorneys who specialize in legal matters pertaining to the issuance of debt (“Firms” or “Bidders”) that are interested in presenting their qualifications to serve as underwriters’ counsel in legal matters pertaining to the issuance of municipal securities by the Commonwealth of Massachusetts and Treasury Agencies.

This RFR is being issued pursuant to the Treasury’s RFR for Legal Services Related to the Issuance of Debt, dated August 31, 2011, which permits the Treasury to add additional Firms to the current qualified list of underwriters’ counsel.

Firms currently qualified by the Treasury to provide these legal services to the Commonwealth pursuant to the above-referenced 2011 RFR are not required to submit responses.

Pursuant to the terms of such 2011 RFR, such Firms will remain on the Treasury’s current qualified list of underwriters’ counsel and such list will remain in effect through and including August 31, 2015. The Treasury may, however, without advance notice, terminate the qualification of any and all Firms on such list at any time.

Firms qualified pursuant to this RFR will be added to the Treasury’s current qualified list of underwriters’ counsel to serve as counsel to the underwriters of Commonwealth debt issuance in negotiated bond sales. From this list, underwriters chosen to lead a negotiated transaction for debt issued by the Treasury will select their counsel for negotiated transactions. Said underwriters’ counsel will be paid by the Treasury, but will not have an attorney-client relationship with, nor be subject to the direction or control of the Treasury. The foregoing legal representation shall include the tasks customarily performed by

underwriters' counsel as determined by the selected underwriters, including without limitation, assisting the underwriters in their due diligence, the preparation of the bond purchase agreement, and the structuring and selling of the bonds efficiently and with the utmost integrity.

Any Firm qualified pursuant to this RFR should not interpret such pre-qualification as a promise or commitment to be engaged for any legal services. The use of Firms will be on an as needed basis only.

II. GENERAL INFORMATION

- A. Article LXII of the Massachusetts Constitution empowers the Legislature to borrow money on the credit of the Commonwealth. This authority is delegated to the State Treasurer pursuant to Chapter 29 of the General Laws. This authority is carried out by the Treasury's Debt Management Department, which is responsible for borrowing the funds needed to operate Massachusetts state government efficiently, accounting for and managing all of the Commonwealth's outstanding debt obligations, and providing timely repayment to investors.

The Commonwealth's borrowing needs are regular and recurring, consistent with the borrowing patterns of most large states, including both short-term and long-term borrowings. Treasury is responsible for short-term borrowings that are needed to enhance the Commonwealth's cash position throughout the fiscal year due to the uneven receipt of tax revenues and federal grants over the twelve-month fiscal year. Short-term borrowings include the sale of fixed-rate revenue anticipation notes ("RANs") as well as the issuance of commercial paper. Because these borrowings are for operations, all fixed-rate RANs and commercial paper issued as RANs are repaid by the end of the fiscal year.

The Treasury also issues long term debt to finance the state's capital budget by selling Commonwealth bonds to investors. The capital budget is developed over a five-year horizon by the Executive Office for Administration and Finance ("A&F") and is made up of expensive infrastructure projects, which require large up-front outlays. These projects include roads, bridges, state office buildings, prisons, and other facilities. The amount of borrowing done annually and how bond proceeds are spent annually is determined by A&F. Debt financing allows the Commonwealth to make capital investments in long-term public infrastructure with repayment occurring over the useful life of the asset; this spreads the burden of repayment over the state budgets during which the asset was utilized. Long-term borrowings are typically large and involve pledging the state's taxing powers.

Based on recent legislative bond authorizations and A&F's most recent five-year Capital Investment Program, Treasury expects to issue approximately \$2.2 billion in new bonds per year over the next four years, including both large traditional issuances and issuances through the Commonwealth's ongoing MassDirect NotesSM program. Cash flow requirements for the state's operating budget may also require the sale of approximately \$1 billion per year in short-term notes and commercial paper to ensure that the Commonwealth's liquidity remains strong.

The Commonwealth currently has liquidity support for a \$200 million commercial paper ("CP") program for general obligation notes, through a line of credit. The CP program may be used as bond anticipation notes or for operating cash flow purposes. Therefore, it is not possible to predict with any certainty the level of CP use.

For a more detailed description of the Treasury's financing needs and other operating information, see the Commonwealth's most recent Information Statement, dated May 7, 2014, available on the

Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (“EMMA”).

- B.** The Treasury is exempt from 801 Code of Massachusetts Regulations (“CMR”) 21.00: Procurement of Commodities and Services. The Treasury has opted to follow these regulations to the maximum extent possible in this RFR. All terms, conditions, requirements and procedures included in this RFR must be met for a response to be qualified as responsive. A response that fails to meet any material term, condition, requirement or procedure of this RFR may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of non-material errors or omissions. **The Treasury and the subject Procurement Management Team (“PMT”) reserves the right to modify, amend or cancel the terms of the RFR at any time.** Unless otherwise specified, all communications, responses and documentation regarding this RFR must be in English, all measurements must be provided in feet, inches and pounds and all cost proposals or figures in U.S. Currency. All responses must be submitted in accordance with the specific terms of this RFR. No electronic responses may be submitted in response to this RFR.

Copies of this RFR may be obtained electronically at COMMBUYS at <http://www.commbuys.com> & on the Treasury website at <http://www.massbondholder.com/>, & <http://www.mass.gov/treasury/about/procurements/>.

III. RFR CALENDAR, INSTRUCTIONS AND EVALUATION PROCESS

A. RFR CALENDAR/TIMELINE

The following is the tentative time schedule for the Treasury’s selection of qualified Firms under this RFR. All dates are subject to change by the Treasury with notice on COMMBUYS.

- Issuance of RFR Friday June 20, 2014
- Question Deadline Tuesday June 24, 2014 at 5:00 PM
- Post Answers to Bidder Questions Thursday June 26, 2014
(posted on COMMBUYS at <http://commbuys.com>, <http://www.massbondholder.com>, & <http://www.mass.gov/treasury>)
- RFR Response Deadline Monday July 7, 2014 at 2:00 PM
- Approximate Qualification Date Summer 2014

NOTE: Questions concerning the RFR must be submitted to the RFR Contact Person in writing:

Jameel Moore, Legal and Financial Analyst
Office of the State Treasurer and Receiver-General
ATTN: RFR Legal Services – Issuance of Debt 2014
One Ashburton Place, 12th Floor
Boston, Massachusetts 02108
E-mail Address: procurements@tre.state.ma.us

Do not contact any other Treasury employee regarding this procurement.

B. RFR INSTRUCTIONS

1. **Response Submission:** The original, two (2) hard paper copies and six (6) memory stick/CD(s) of the Bidder's responses and attachments must be delivered in the same sealed package no later than **July 7, 2014 at 2:00 PM EDT**.
 - a. The original submission should be signed in **blue ink** as to make it easily distinguishable from the other copies.
 - b. Responses and attachments received after this deadline date and time will not be evaluated. A facsimile or email response will not qualify as a "submission" for deadline purposes in advance of or in lieu of a hard copy submission.

Responses and attachments should be delivered to:

Jameel Moore
Legal and Financial Analyst
Office of the Treasurer and Receiver-General
ATTN: "RFR Legal Services – Issuance of Debt 2014"
One Ashburton Place, 12th Floor
Boston, MA 02108
E-mail Address: procurements@tre.state.ma.us

2. **Response Format:** Failure to follow these formatting requirements may result in the disqualification of the Bidder's response. Bidders are required to use the Response Template which can be downloaded from COMMBUYS. The Response Template contains all required elements of a valid proposal response as indicated below:
 - (a) Cover Letter
 - (b) Legal Certification and Disclosure Statement
 - (c) Firms Resumes
 - (d) Phase Two Questionnaire
 - (e) Mandatory Attachments
 - (f) **Cost Response (Separate envelope)**

NO COST INFORMATION SHALL BE INCLUDED ANYWHERE IN THE RESPONSE EXCEPT IN A SEPARATE SEALED ENVELOPE.

3. **Cost Proposal.** THE COST PROPOSAL MAY BE SUBMITTED IN THE SAME PACKAGE AS THE REST OF THE RESPONSE, BUT MUST BE SUBMITTED UNDER SEPARATE COVER IN A SEPARATE SEALED ENVELOPE LABELED "COST PROPOSAL". FAILURE TO MEET THIS REQUIREMENT MAY RESULT IN DISQUALIFICATION OF THE BID.
4. **Response Provisions:** When responding to this RFR, firms should take note of the following provisions:
 - a. The Treasury reserves the right to request additional information from Bidders responding to this request. Additionally, upon reviewing the responses the PMT may decide to have certain firms make oral presentations.

- b. The Treasury reserves the right to reject any and all responses to this request, to waive any minor informality in a response, and to request clarification of information from any Bidder responding. The Treasury reserves the right to amend or cancel this RFR at any time. All responses and their contents will become the sole property of the Commonwealth upon receipt by it.
- c. All responses and their contents will become the sole property of the Commonwealth/ Treasury upon receipt by it and will not be returned to the Bidder.
- d. The Treasury will not reimburse any Bidder for any costs associated with the preparation or submittal of any response to this request or for any travel and/or per diem incurred in any presentation of such responses.
- e. The narrative response should address all items included in each section of the Technical Proposal.
- f. The written response to Phase II Questionnaire (Scope of Services) shall be limited to replies **totaling no more than # 25 pages, double-sided** (a total of 50 pages single sided page equivalents) per proposal. The mandatory attachments and other supporting documentation are excluded from the 25 page maximum. Any response over 25 pages excluding the requested attachments and exhibits may not be considered. The 25 pages must be single spaced; submitted in 12-point font; with at least three-quarter inch margins left and right and one-inch margins top and bottom. Additionally, the response must be printed on three-hole punched paper.

5. **Disqualification of Responses:**

- a. **Late Proposals:** Proposals that are received after the deadline date and time shall be automatically disqualified.
- b. **Non-responsive Proposals:** A response that fails to meet any material term, condition, requirement or procedure of this RFR may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of non-material errors or omissions. Non-responsive proposals shall include, but not be limited to those, which fail to address or meet any mandatory item, and those submitted in insufficient number, or in incorrect format.
- c. **Collusion:** Collusion by two or more Bidders agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a proposal or termination of this contract. Bidders will be required to complete a “Certificate of Non-Collusion” as one of the mandatory attachments to this RFR.
- d. **Debarred Bidders or Subcontractors:** A Bidder, who is currently subject to any Commonwealth or federal debarment order or determination, shall not be considered for evaluation by the PMT. If a Bidder’s proposal is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the proposal, then that proposal shall be deemed unresponsive if the named subcontractor is found to be debarred. Proposals that indicate that subcontractors will be used but do not rely on any

specifically named subcontractor shall not be deemed unresponsive if the disqualification of a proposed subcontractor will not materially alter the proposal.

C. RFR EVALUATION PROCESS

Evaluation Process: The RFR Evaluation Process will be conducted in three phases. A review team consisting of staff from the Treasury will complete the Phase One Review for all proposal submissions. The purpose of the Phase One Review is to eliminate any bids that are non-responsive to the requirements of the RFR. Bids that are deemed to be qualified based on the Phase One Review will be submitted to the PMT for additional review. The PMT will consist of staff from the Treasury. The PMT will make a recommendation to the State Treasurer who will then accept or reject the recommendation. The State Treasurer will make the final selection decision. **(Phase One, Phase Two and Phase Three of this RFR will be evaluated separately.)**

- A. **Phase One Review:** Bidders' responses will be reviewed based on listed criteria and completeness of response, including mandatory attachments and compliance to submission criteria. Bids that do not comply with these components will be rejected and will not proceed to Phase Two Review. The Treasury reserves the right to waive or permit cure of non-material errors or omissions. Staff at the Treasury will conduct this portion of the review.
- B. **Phase Two Review:** Qualified bids, based on the Phase One Review, will be considered for additional review in Phase Two. The Phase Two review will also include any oral presentation requested by the PMT. The Phase Two review will count for 80% of each Firm's score. The Phase Two Review and scoring will be conducted as follows:
- **55% Qualifications and Experience** This RFR seeks Responses for underwriters' counsel. (See Questionnaire in the Response Template pages 11 – 16.)
 - **20% General Firm Information**
 - a. **General Information.** Please provide a general description of the Firm, its history, significant changes in its makeup over the last three years, and its range of business and a Firm resume, if available. Other than a Firm resume, this description should be factual and focused on the Firm's legal services pertaining to the issuance of debt, and in particular, its role representing underwriters, and should not be written as marketing materials.
 - b. **Firm Signatory.** Provide the name, address, phone number, and email address for the Firm Signatory (see Section V.A.1). Include a summary of his or her relevant experience. Identify the unique capabilities or experience that this person would bring to the engagement.
 - c. **Qualifications and Experience.** Provide a statement of the Firm's qualifications to represent underwriters of Commonwealth debt issuances in negotiated bond sales, including the Firm's current and historical expertise and experience in such representation. Please include in that statement a description of such experience over the past three (3) years. (See the Response Template page 12.)

- d. **Resumes.** Please attach to your Response the resumes of each individual who will be providing legal services under this RFR. The Treasury reserves the right to reject a Firm's use of any particular individual to perform legal services, within the Treasury's sole discretion. (See the Response Template page 10.)
 - **15% References** All responses must include references from at least three (3) clients of the Firm that required legal representation similar to that required by the Treasury. The references must include a contact person, a full address, a phone number and an email address. In addition to the foregoing, please include a listing of public and private clients for whom the Firm has provided services similar to those set forth in this RFR, with a description of the services provided. If any of the individuals identified by a Firm in question 1 (Staffing) of the applicable Phase Two Questionnaire previously participated in any of the projects performed for other clients on the aforementioned listing, please identify the projects in which each individual participated. (See the Response Template pages 22-23.)
 - **5% Treasury Supplier Diversity Program** The Treasury requires all responsive Bidders to submit a Treasury Supplier Diversity Program Plan Form ("TSDP Plan Form") with its response. (See the Response Template page 26 "Treasury Supplier Diversity Program Instructions" Attachment for further information on the TSDP Plan Form, and how this section will be scored).
 - **5% Invest in Massachusetts** the Treasury encourages investment in our local economy and is committed to advancing the creation and preservation of jobs in the Commonwealth. Consequently, all responsive Bidders/Proposers must submit with their bids an *Invest in Massachusetts Data Form* ("IMD Form"). (See the Response Template page 26.)
- C. **Phase Three Review:** Cost will be evaluated in relationship to the Phase Two Review and scoring of Bidders' responses. The Phase score will represent 20% of each Firm's score.
- D. **Evaluatoin Criteria**

The selection of Firms under this RFR will be based on written responses to this RFR, **including the separately bound Cost Response**, any oral interviews, references, and, if necessary, the Treasury's independent inquiry of matters in a Firm's Response or in the public record. The submitted Responses will be evaluated on the answers provided to the questions in the Response Template, and the submitted Cost Proposal. In evaluating the foregoing, the PMT will consider the following:

- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys that will provide legal services to the Treasury, has the ability, formal qualifications, experience, legal knowledge, technical competence, and resources necessary to work effectively with the Treasury to accomplish the tasks and goals of the engagements contemplated by this RFR?
- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys

that will provide legal services to the Treasury, has a strong understanding of Treasury needs, the process of issuing Commonwealth debt, and the requirements and nuances of applicable Massachusetts laws, the Massachusetts Constitution, and federal securities and tax law?

- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys that will provide legal services to the Treasury, has the necessary experience providing legal services to State-level issuers similar to the Commonwealth?
- Has the Firm demonstrated in its Response that the Firm is willing and able to provide excellent and cost-effective levels of service to the Treasury in a collaborative relationship with the Treasury's legal and managerial staff?
- Has the Firm demonstrated in its Response that it can and will undertake any engagement that arises from this RFR with a high level of skill and integrity?
- Has the Firm demonstrated in its Cost Response that it is willing and able to provide high quality legal services at a very competitive price?

A recommendation to the State Treasurer by the PMT will be based on the evaluation of a Firm's Response using the above criteria.

D. ORAL PRESENTATIONS / INTERVIEWS

After completion of Phase One and Phase Two but prior to Phase Three, the PMT shall have the option to invite all or some Bidders to make oral presentations/come in for interviews. Oral presentations/interviews provide the PMT with an opportunity to evaluate the Bidder through the presentation of their proposal. The PMT will make the decision on whether or not to have Bidders in for oral presentations/interviews. The decision to engage in oral interviews will solely be in the purview of the PMT. Based upon scores determined during the initial Phase II evaluations of firm's responses to the Phase II technical questions; it will be within the full discretion of the PMT to determine the cutoff for top scoring firms to move onto the oral interviews. Only firms that receive an invitation to participate in oral presentations/interviews will proceed to the Phase III cost evaluation. Firms not receiving an invitation to oral interviews will be eliminated. Bidders will not be informed of their rank at the time of the oral presentation/interview. Additionally, the PMT reserves the right to adjust any Phase II score following any Oral Presentation/Interview, and before proceeding on to Phase III.

The time allotments and the format shall be the same for all oral presentations/interviews. The PMT will give the Bidder at least three (3) business days prior notice regarding the date of an oral presentation/interview. The PMT may waive the location and medium requirements of an oral presentation/interview upon the written request of a Bidder due to special hardships, such as a Bidder with disabilities or limited resources. In these circumstances the PMT may conduct oral presentations through an alternative written or electronic medium (e.g., telephone, videoconference, TTY or Internet). The PMT may require the Bidders assign key personnel to conduct the oral presentation/interview.

A Bidder is limited to the presentation of material contained in its proposal, with the limited exception that a Bidder may address specific questions posed by the PMT or provide clarification of

information contained in its proposal. Any correction or modification of the proposal or the presentation of supplemental information shall be considered prejudicial to the interests of other Bidders and fair competition and shall not be permitted. A Bidder's attempt to submit such corrections, modifications or supplemental information during an oral presentation/interview may subject the Bidder's proposal to disqualification. A Bidder's failure to agree to an oral presentation/interview may result in disqualification from further consideration. Oral presentations may be recorded by the Treasury as a matter of public record.

On-Site Visits (Optional). The PMT reserves the right to conduct on-site inspections of any or all Bidder locations at any time prior to the awarding of this contract to verify the Bidder's ability to perform the services required. The PMT shall schedule the time of these site visits and shall provide notice of at least three (3) business days before a visit. Failure to agree to a site visit may result in disqualification of a Bidder's proposal. Only those firms that were evaluated in Phase II and were invited for an oral presentation / interview will be the subject of an on-site inspection, in the event the PMT elects to conduct such an on-site inspection.

IV. SPECIFICATIONS, REQUIREMENTS & COMPONENTS

By submitting a Response to the RFR, the Bidder agrees to and agrees to comply with all of the RFR required specifications, components and requirements listed below in Sections A & B:

A. RFR REQUIRED SPECIFICATIONS

1. **Best Value Selection and Negotiation.** The PMT and/or the State Treasurer and Receiver-General may select the response(s) that demonstrates the "Best Value" overall.
2. **Bidder Communication.** Bidders are prohibited from communicating directly with any employees of the Treasury, Treasury Agencies, including the Massachusetts Water Pollution Abatement Trust, or any member of the PMT regarding this RFR and may be disqualified for doing so at the determination of the PMT, except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may communicate with the contact person for this RFR in the event this RFR is incomplete or the Bidder is having trouble obtaining any required attachments electronically through COMMBUYS.
3. **Brand Name or Equal.** Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any service. The Treasury will consider clearly identified offers of substantially equivalent services submitted in response to such reference.

4. **COMMBUYS Market Center.** COMMBUYS is the official source of information for this RFR and is publicly accessible at no charge at www.commbuys.com. Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the RFR, as referenced in COMMBUYS, and are incorporated into the RFR and any resulting contract.

Bidders are solely responsible for obtaining all information distributed for this RFR via COMMBUYS. RFR Q&A supports Bidder submission of written questions associated with a RFR and publication of official answers.

It is each Bidder's responsibility to check COMMBUYS for:

- Any amendments, addenda or modifications to this RFR, and
- Any RFR Q&A records related to this RFR.

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a response based on an out-of-date RFR or on information received from a source other than COMMBUYS.

Bidders may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of the RFR, its specifications, or terms and conditions, which change the intent of this RFR are prohibited and may disqualify a response.

5. **COMMBUYS Subscription.** Bidders may elect to obtain a free COMMBUYS Seller subscription which provides value-added features, including automated email notification associated with postings and modifications to COMMBUYS records.

All Bidders submitting a response to this RFR agree that, if awarded a contract: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (4) Bidder understands and acknowledges that all references to the Comm-PASS website or related requirements throughout this RFR, shall be superseded by comparable requirements pertaining to the COMMBUYS website; and (6) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

The COMMBUYS system introduces new terminology, which bidders must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the COMMBUYS Resource Center.

6. **Conflict of Interest.** Prior to award of any contract, the Bidder/Vendor shall certify in writing to the procuring agency that no relationship exists between the Bidder/Vendor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the Bidder/Vendor and another person or organization that constitutes a conflict of interest with respect to a state contract. No official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this project shall, prior to the completion of the project, voluntarily acquire any personal interest, either directly or indirectly, in this contract or proposed contract.

The Bidder shall provide assurance that it presently has no interest and shall not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder. The Bidder shall also provide assurances that no person having any such known interests shall be employed during the performance of this contract.

7. **Costs.** Costs that are not specifically identified and defined in the Bidder's response, and accepted by the Treasury, will not be compensated under any engagement pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Bidders in responding to this RFR.
8. **Electronic Communication/Update of Bidder's/Contractor's Contact Information.** It is the responsibility of the prospective Bidder and qualified Firm to keep current the E-mail address of the Bidder's contact person and prospective contract manager, if awarded a contract, and to monitor that E-mail inbox for communications from the PMT, including requests for clarification. The PMT and the Commonwealth assume no responsibility if a prospective Bidder's/awarded Contractor's designated E-mail address is not current, or if technical problems, including those with the prospective Bidder's/awarded Contractor's computer, network or Internet service provider (ISP) cause E-mail communications sent to/from the prospective Bidder/awarded Contractor and the PMT to be lost or rejected by any means including E-mail or spam filtering.
9. **Environmental Response Submission Compliance.** In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all responses submitted should comply with the following guidelines:
 - All copies should be printed double sided.

- All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf). To document the use of such paper, a photocopy of the ream cover/wrapper should be included with the response.
- Unless absolutely necessary, all responses and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three ringed binders, glued materials, paper clips, and staples are acceptable.
- Bidders should submit materials in a format which allows for easy removal and recycling of paper materials.
- Bidders are encouraged to use other products that contain recycled content in their response documents. Such products may include, but are not limited to, folders, binders, paper clips, diskettes, envelopes, boxes, etc. Where appropriate, bidders should note which products in their responses are made with recycled materials.
- Unnecessary samples, attachments, or documents not specifically asked for should not be submitted.

10. **Estimated Provisions.** The Treasury makes no guarantee that any commodities or services will be purchased from any qualification resulting from this RFR. Any estimates and/or past or current procurement volumes referenced in this RFR are included only for the convenience of Bidders, and are not to be relied upon as any indication of future purchase levels.

11. **HIPAA: Business Associate Contractual Obligations.** Bidders are notified that any department meeting the definition of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will include in the RFR and resulting contract sufficient language establishing the successful bidder's contractual obligations, if any, that the department will require in order for the department to comply with HIPAA and the privacy and security regulations promulgated thereunder (45 CFR Parts 160, 162, and 164) (the Privacy and Security Rules). For example, if the department determines that the successful bidder is a business associate performing functions or activities involving protected health information, as such terms are used in the Privacy and Security Rules, then the department will include in the RFR and resulting contract a sufficient description of business associate's contractual obligations regarding the privacy and security of the protected health information, as listed in 45 CFR 164.314 and 164.504 (e), including, but not limited to, the bidder's obligation to: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information (in whatever form it is maintained or used, including verbal communications); provide individuals access to their records; and strictly limit use and disclosure of the protected health information for only those

purposes approved by the department. Further, the department reserves the right to add any requirement during the course of the contract that it determines it must include in the contract in order for the department to comply with the Privacy and Security Rules. Please see other sections of the RFR for any further HIPAA details, if applicable.

12. **Minimum Bid Duration.** Bidder responses/bids made in response to this RFR must remain in effect for 90 days from the date of bid submission and thereafter until either the Firm withdraws the response in writing, a contract is executed or the procurement is canceled, whichever occurs first.
13. **Public Records.** All responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, Massachusetts General Laws (“M.G.L.”), Chapter 66, Section 10, and Chapter 4, Section 7, Subsection 26. Any statements in submitted responses that are inconsistent with these statutes will be disregarded. Bidders are advised that all proposals are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing Bidders until the evaluation process has been completed, the contract has been awarded and negotiations are finalized.
14. **Reasonable Accommodation.** Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the RFR contact person. Requests for accommodation will be addressed on a case-by-case basis. A Bidder requesting accommodation must submit a written statement which describes the Bidder’s disability and the requested accommodation to the contact person for the RFR. The PMT reserves the right to reject unreasonable requests.
15. **Restriction on the Use of the Commonwealth Seal.** Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their bid package or in any subsequent marketing materials if they are awarded a contract. Use of the Coat of Arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law.
16. **Prohibition Against Selling or Distributing Information.** Any Bidder awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of participating or eligible Commonwealth of Massachusetts employee names, telephone numbers, email addresses or mailing addresses.

B. COMPONENTS OF PROCUREMENT

1. **Duration and Renewal Options.** The Treasury's current qualified list of underwriters' counsel remains in effect through and including August 31, 2015. Firms qualified pursuant to this RFR will be added to that list and subject to the same duration dates ending on August 31, 2015. The Treasury may, however, without advance notice, terminate the qualification of any and all Firms on such list at any time.
2. **Acquisition Method.**
 - ☐ Outright Purchase
 - ☐ License
 - ☒ Fee for Service
 - ☐ Tax-exempt Lease Purchase
 - ☐ Term Lease
 - ☐ Lease Purchase
 - ☐ Rental (not to exceed 6 months)
 - ☐ Other (specify)
3. **Single or Multiple Contracts.** The State Treasurer and Receiver-General reserves the right to award any contract to a single vendor or multiple vendors, in the best interest of the Office of the State Treasurer and Receiver-General. The Bidder must agree to cooperate with such other Bidders, and must not commit or permit any act that may interfere with the performance of work by any other Bidder.
4. **Contract Performance and Additional Business Specifications.**
 - a. **Evaluation and Selection of Contractor.** The Treasury shall have sole authority to evaluate and make the final selection of Bidder(s) for contract negotiation(s) pursuant to this RFR. The selection will be made after evaluation of both technical and cost proposals by the PMT and final approval by the State Treasurer.
 - b. **Change in Terms.** The Treasury reserves the right to modify the specifications identified in the RFR at any time prior to the closing date. The Treasury reserves the right to negotiate with the selected Bidder(s) as to any element of cost or performance, including without limitation, elements identified in the RFR and/or the selected Bidder's response in order to achieve the best value for the Commonwealth. The Treasury reserves the right to request from any Bidder a "best and final offer" as to the Bidder's proposal or cost proposal. The Treasury reserves the right to procure some, all, or none of the goods and/or services specified in this RFR.
 - c. **Termination or Suspension.** Once retained, a Firm's service may be terminated or suspended from the Treasury's contract for poor performance, failure to perform, fraud or other cause at any time without prior notice. Firms may be terminated from the contract without cause with sixty (60) day prior written notice. The Firm may not terminate the contract or performance except upon a minimum of 120 days written notice to the Treasury.

- d. **Permits and Compliance.** The Vendor/Contractor shall procure and pay for all permits, licenses and approvals necessary to perform the services solicited in this RFR. The Vendor/Contractor shall comply with all applicable laws, ordinances, rules, orders and regulations related to the performance of the services solicited. The Treasury may, at its option, request documentation evidencing the Vendor/Contractor's compliance.
- e. **Rejection of Proposals.** The Treasury reserves the right to reject any and all proposals submitted under this solicitation.
- f. **Fees Subject to Office of the State Treasurer and Receiver-General Signatory Authorization.** All fees must be approved by the State Treasurer or his designee and are subject to verification of performance.
- g. **Confidentiality Policy Regarding Bidder's Support Staff and/or Vendors.** The Treasury may require Bidders' support staff or outside vendors to sign a confidentiality agreement for the confidential information they will have or have access to.
- h. **Subcontracting Policies.** The legal services to be procured under this RFR shall not be sub-contracted or performed under any joint-venture agreement or similar arrangement without the specific written approval of the State Treasurer.
- i. **Concurrent Contracts Running (Renewals and Transitions).** The Treasury shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year or if satisfactory performance by the contractor does not ensue. The Treasury will also have the right to sole discretion in exercising an option to renew, which will not be subject to contractor acceptance or agreement. Any assistance required for this transition must be provided in a smooth and timely manner. If at any time the contract is canceled, terminated or expires, and a contract is subsequently executed with a firm other than the contractor, the contractor has the affirmative obligation to assist in the smooth transition of contract services to the subsequent contractor.
- j. **Pricing: Price Limitation:** The Bidder must agree that no other state or public entity customer within the United States of similar size and with similar terms and conditions shall receive a lower price for the same commodity and service during the contract period, unless this same lower price is immediately effective for the Commonwealth. If the Commonwealth believes that it is not receiving this lower price as required by this language, the Bidder must agree to provide current or historical pricing offered or negotiated with other state or public entities at any time during the contract period in the absence of proprietary information being part of such contracts.
- k. **Submission of Proposal Materials and Oral Presentation.** All materials, representations and submissions made within the proposal and at the oral presentation are

subject to becoming part of the contract binding the selected Bidder to uphold the materials, representations and submissions made by the selected Bidder within the proposal and at the oral presentations.

- l. **Fiduciary Status of the Consultant; Chapter 268A.** With respect to the performance of its duties and responsibilities hereunder, if awarded the contract, the Bidder/Consultant/contractor/firm acknowledges that it is a fiduciary, and that the Bidder/Consultant/contractor/firm will discharge its duties and responsibilities under this Agreement in accordance with the fiduciary standards of conduct and other requirements as they apply to the Bidder/Consultant/contractor/firm. The Bidder/Consultant/contractor/firm is advised of the existence of Massachusetts General Laws, Chapter 268A (the Massachusetts "Conflict of Interest" statute), and is required to act and perform its duties in accordance with such provisions.
- m. **Security Breach Law, M.G.L. c. 93H.** The Firms hereby acknowledge and agree to comply with the requirements and responsibilities, including those of providing notice and response, as set forth in G.L. c. 93H concerning Security Breaches and any regulations implemented to effectuate security of "personal information" as defined in § 1 of G.L. c. 93H.

V. PHASE ONE REQUIREMENTS

Compliance with all criteria listed below is **mandatory** in order for a bid to be accepted for further review. Lack of compliance with the Phase One criteria may disqualify the Bidder. Phase One of Bidder's response should demonstrate compliance with each of the conditions qualifying an institution to propose as outlined below.

A. LEGAL AND OTHER REQUIREMENTS

The Phase One review will entail an examination of the Response package to determine whether it is complete and responsive. The Response Package must include (1) the Legal Requirements and Mandatory Attachments listed below, (2) the Firm's answers to the questions and other requirements in the Response Template, and (3) a separately packaged Cost Response. Failure to submit a complete Response package will result in the disqualification of the Firm in the Phase One review.

1. Legal Requirements

- i. **Firm Signatory.** All documents to be signed on behalf of the Firm must be signed by an attorney in the Firm (the "Firm Signatory") who is (a) authorized to contractually bind the Firm to the requirements of this RFR and any contract resulting from this RFR, (b) authorized to make, on behalf of the Firm, the certifications and disclosures herein, (c) a member in good standing of the Massachusetts Bar, (d) listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyer's Municipal Market Place (i.e., the "Red Book"), and (e) identified by his or her title within the Firm next to or under his or her signature. The Firm Signatory will be the primary contact person at the Firm.

- ii. Each Firm submitting a Response must complete and have signed by the Firm Signatory a Legal Certification and Disclosure (see the Reponse Template pages 6-9).

Failure to complete and properly sign the Legal Certification and Disclosure Statement may disqualify a Firm under this RFR.

B. MANDATORY ATTACHMENTS AND ENCLOSURES

Phase One of the Bidder's response shall include the completed mandatory attachments listed in the Response Template pages 17-30.

The Response Template and the subject forms can also be found on COMMBUYS with this RFR. All mandatory attachments should be signed by an individual with the authority to bind the Firm, and the "originals" should have an original signature in blue ink and the signatory must be listed on the Contractor Authorized Signatory Listing provided in the RFR Response Template.

VI. SCOPE OF SERVICES & PHASE TWO QUESTIONNAIRE

A. SCOPE OF SERVICES: UNDERWRITERS' COUNSEL

Services to be Procured

1. **General.** Set forth below are the descriptions of the legal services to be provided by Firms under this RFR. These descriptions are not intended to be comprehensive but are intended to provide general guidance as to the Scope of Services that Firms will be expected to provide. Firms are advised that the Scope of Services will be considered to include, in addition to the services described below, all of those services understood by knowledgeable counsel to be reasonably necessary to satisfy the duties of such counsel.
2. **Underwriters' Counsel.** Firms qualified pursuant to this RFR will be added to the Treasury's qualified list of underwriters' counsel to serve as counsel to the underwriters of Commonwealth debt issued in negotiated bond sales. From this list, underwriters **chosen to lead a negotiated transaction** for Treasury debt will select their counsel. Said underwriters' counsel will be paid by Treasury but will not have an attorney-client relationship with, nor be subject to the direction or control of the Treasury. The foregoing legal representation shall include the tasks customarily performed by underwriters' counsel as determined by the selected underwriters, including, without limitation, assisting the underwriters in their due diligence, the preparation of the bond purchase agreement, and the structuring and selling of the bonds efficiently and with the utmost integrity.

B. PHASE TWO QUESTIONNAIRE

See the Response Template pages 11 – 16.

C. ATTACHMENTS

Attachment A

COST PROPOSAL

See the Response Template pages 28-30.

Attachment B

LEGAL CERTIFICATION AND DISCLOSURE STATEMENT

See the Response Template pages 6-9.

Attachment C

FIRM RESUMES

See the Response Template page 10.